

REMARKS

REJECTION UNDER 35 USC § 103

The examiner rejected claims 1, 5 and 7-10 under 35 USC §103(a) as unpatentable over Schlarb (US 2004/0078823) in view of Mendelsohn (US 6,771,886), and further in view of Emura (US 6,344,878).

Regarding claim 1, the examiner asserts the combination of Schlarb and Mendelsohn disclose a program receiver determining a potential transmission time of a pay per view program. The examiner further asserts Emura discloses the elements recited in f, g, and h:

- f) determining at the program receiver if an availability status of a content delivery path is available at a predetermined time prior to the potential transmission time;
- g) if the availability status of the content delivery path is available at the predetermined time prior to the potential transmission time, requesting transmission of the pay per view program at the potential transmission time on the associated transmission channel; and
- h) if the availability status of the content delivery path is not available at the predetermined time prior to the potential transmission time, repeating (e) – (g) until the availability status of the content delivery path is available.

The applicant respectfully disagrees.

Emura resolves scheduling conflicts *at the time a desired program is selected for recording*. If there is a scheduling conflict between a selected program and a program previously scheduled for recording, Emura discloses to select another broadcast time for the selected program (see Abstract). In contrast, the claim recites to determine at the program receiver if an availability status of a content delivery path is available *at a predetermined time prior to the potential transmission time*. That is, a scheduling conflict is resolved near the time a program was initially selected for recording. If a

scheduling conflict is detected prior to transmitting a selected program, the conflict is resolved by selecting a different broadcast time for the selected program.

An important difference between Emura and claim 1 is that claim 1 recites to resolve a scheduling conflict relative to the *availability of a content delivery path* rather than resolve a conflict relative to a user's program schedule. A significant advantage of claim 1 is the ability to resolve a scheduling conflict based on the status of the content delivery paths (e.g., the status of the tuners) near the time that a particular program is scheduled for recording. Consider the example where a program receiver comprises two tuners. If two programs are selected for recording that overlap in transmission time, whether the two programs can be recorded simultaneously depends on the status of the tuners at the transmission time of each program. If one of the tuners is currently in use (e.g., the user is currently watching a different channel), then there is a scheduling conflict that is resolved by recording one of the programs at a later time. However, if both tuners are available at the time of transmission (e.g., if the TV is off), then there is no scheduling conflict and both programs can be recorded.

The rejection should therefore be withdrawn since the relied upon prior art provides no reason to resolve a scheduling conflict relative to *the status of content delivery paths at a predetermined time prior to a potential transmission time*.

The examiner rejected claims 3 and 4 under 35 USC §103(a) as unpatentable over Schlarb in view of Mendelsohn and Emura and further in view of Ellis (US 2005/0235323). The applicant respectfully disagrees.

Claim 3 covers an embodiment that further illustrates an important distinction over Emura. In claim 3, a change channel request is displayed if the user is currently viewing a different channel at the time a program has been selected for recording. If the user responds positively to change the channel, then the status of the content delivery path is considered available. However, if the user responds negatively to change the

channel, then the status of the content delivery path is considered not available and a different transmission time is selected for the program. As described above, Emura discloses to resolve scheduling conflicts at the time programs are selected for recording, whereas the claims recite to resolve scheduling conflicts relative to the *availability status of the content delivery path* near the transmission time of each program.

Ellis discloses the well know technique of displaying a change channel request when the program receiver needs to record a selected program. However, if the user responds negatively to change the channel, Ellis simply does not record the selected program (see figure 3b blocks 312 and 314). Ellis provides no reason to select a different transmission time for a selected program if the user refuses to change the channel. The rejection should therefore be withdrawn.

The examiner rejected claims 18-21 under 35 USC §103(a) as unpatentable over Russo (US 6,025,868) in view of Shah-Nazaroff (US 6,157,377) and further in view of Mendelsohn. The applicant requests these claims be canceled without prejudice.

The rejections of the remaining claims should be withdrawn for at least the reasons set forth above.

CONCLUSION

In view of the foregoing amendments and remarks, the applicant respectfully submits that the pending claims are now in condition for allowance and requests reconsideration of the rejections. If it is believed that a telephone conversation would expedite the prosecution of the present application, or clarify matters with regard to its allowance, the examiner is invited to contact the undersigned attorney at the number listed below.

The Commissioner is hereby authorized to charge payment of any required fees associated with this Communication or credit any overpayment to Deposit Account No. 23-1209.

Respectfully submitted,

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By: /Howard H. Sheerin/
Howard H. Sheerin
Reg. No. 37,938

WESTERN DIGITAL TECHNOLOGIES, INC.
20511 Lake Forest Drive
Lake Forest, CA 92630
Tel.: (949) 672-7000
Fax: (949) 672-6604